

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

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United States of America, )  
 ) File No. 21-MJ-315(1)  
 ) (KMM)  
Plaintiff, )  
 ) Via Zoom  
vs. ) Teleconference  
 )  
Joshua Cameron Hanes, ) May 18, 2021  
 ) 2:21 p.m.  
Defendant. )  
 )  
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BEFORE THE HONORABLE JON HUSEBY  
UNITED STATES DISTRICT COURT MAGISTRATE JUDGE  
**(PRELIMINARY EXAMINATION AND DETENTION HEARING)**

APPEARANCES

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Proceedings reported by court reporter; transcript  
produced by computer.

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**P R O C E E D I N G S**

**IN OPEN COURT**

**(2:21 p.m.)**

THE COURT: Good afternoon. Today's date is May 18, 2021. It's approximately 2:20 p.m. My name is United States Magistrate Judge Jon Huseby. I'll call the matter of United States of America versus Joshua Cameron Hanes, Case Number 21-MJ-315.

Mr. Hanes, we're here today for your detention and preliminary hearing, but before I get to that, I'd like to go over a couple things with you if I might. Could you please, to start off with, could you please go around the screen and identify who you see on the screen in front of you?

THE DEFENDANT: I see Jordan Pickrom. I see Maribel An -- I don't want to misinterpret her last name. I see Maria Weinbeck, and I see my lawyer James, then I see you, Your Honor. I see Amber Brennan, and I see Caleb, and I see Duty Chambers and two phone calls.

THE COURT: Okay. If at any point in time during the proceeding today if you can't see us, could you please speak up so I could stop the hearing and we'll get that technical glitch fixed. As you've seen, we've already had a little bit of an issue here today so if that happens, could you speak up and let me know?

1 THE DEFENDANT: Yes, Your Honor, I will.

2 THE COURT: Okay. The next thing I'd like to do  
3 is go around the room real quick, if everybody could at  
4 least say something to verify that Mr. Hanes can hear you.  
5 You can obviously hear me because you are responding to my  
6 questions.

7 So, Ms. Pickrom, could you please say "hello."

8 MS. PICKROM: Good afternoon, Your Honor.

9 THE COURT: Ms. Andrade?

10 MS. ANDRADE-VERA: Good afternoon, Your Honor.

11 THE COURT: Ms. Court Reporter, I don't think we  
12 need you to say hello, but you're doing a good job.

13 Mr. Behrenbrinker?

14 MR. BEHRENBRIKER: Good afternoon, Your Honor.

15 THE COURT: Thank you. Ms. Brennan?

16 MS. BRENNAN: Good afternoon, Your Honor.

17 THE COURT: Officer Hoisington?

18 OFFICER HOISINGTON: Good afternoon, Your Honor.

19 THE COURT: Okay, perfect. So, again, similarly  
20 if at any point in time you can't hear us or if I cut out, I  
21 need you to start waving your hands, so I could see that  
22 something is going wrong, and I'll stop it. Okay?

23 THE DEFENDANT: Yes, Your Honor.

24 THE COURT: And if at any point in time in the  
25 hearing today, you need to have a sidebar or break out

1 session with your attorney, please indicate to me, "Judge, I  
2 need a little break to talk with my attorney." I will stop  
3 the proceeding and will make arrangements for that, okay?

4 THE DEFENDANT: Yes, Your Honor.

5 THE COURT: Thank you.

6 THE DEFENDANT: Thank you.

7 THE COURT: The next thing I would like to cover  
8 with you is what's called "Consent." Obviously, we're doing  
9 this by video teleconferencing today. In a usual scenario,  
10 we'd be in an actual courtroom face-to-face, but due to the  
11 pandemic, it's forced us to change the way we do certain  
12 things and trying to avoid the spread of this pandemic.

13 So what I would like to do is ask for your consent  
14 to proceed today by video teleconferencing?

15 THE DEFENDANT: Yes, Your Honor.

16 THE COURT: Okay. I will make a determination  
17 that Mr. Hanes has consented to proceeding today by video  
18 teleconferencing.

19 Counsel, could you please state your names for the  
20 record after me going through all of that.

21 MS. BRENNAN: Good afternoon.

22 THE COURT: Start with the government, yep.

23 MS. BRENNAN: Good afternoon, Your Honor. Amber  
24 Brennan appearing in place of David Steinkamp for the United  
25 States.

1 THE COURT: Thank you.

2 MR. BEHRENBRINKER: Good afternoon, Your Honor.  
3 James Behrenbrinker for the defense representing Mr. Hanes,  
4 who is also present by way of the Zoom video.

5 THE COURT: Thank you. Now, Mister, am I  
6 pronouncing it right, Behrenbrinker?

7 MR. BEHRENBRINKER: That's great, Your Honor.

8 THE COURT: Mr. Behrenbrinker, are you and your  
9 client, are you contesting probable cause?

10 MR. BEHRENBRINKER: Thanks for asking that. I  
11 wanted to mention he's charged with -- Mr. Hanes is charged  
12 with three counts in a Complaint. Count I is Felon in  
13 Possession of a Firearm. Count II relates to Felon in  
14 Possession of a Firearm; and Count III is Possession of More  
15 Than 40 Grams of Methamphetamine With Intent to Distribute,  
16 I believe. We are not contesting probable cause related to  
17 Count II and III, for the purpose of this preliminary  
18 hearing. We are contesting probable cause only as to  
19 Count I of the Complaint.

20 THE COURT: The Felon in Possession count?

21 MR. BEHRENBRINKER: Correct, Your Honor.

22 THE COURT: Ms. Brennan? Do you have a, since  
23 there's been a contest in regards to Count I, do you have a  
24 witness in order to prove that up?

25 MS. BRENNAN: I do, Your Honor, but I guess, and I

1 didn't know until just now that the defense intended to not  
2 contest probable cause on all three of the counts, but I  
3 guess my initial reaction would be do we need to have a  
4 preliminary hearing on one count when there is PC on two of  
5 the other counts? It's just a Complaint. Do you have a  
6 position --

7 THE COURT: Mr. Behrenbrinker, go ahead, I know  
8 you wanted to speak up. Go ahead.

9 MR. BEHRENBRINKER: I think we do need a  
10 preliminary hearing, Your Honor. Counts II and III relate  
11 to the same date and the same situation. Count I is a  
12 completely separate date. As I recall from looking at the  
13 Complaint, that allegedly occurred on December 4th, 2020,  
14 while the activity in Count II and III occurred on March 22,  
15 2021. Count I occurred in Ramsey County, Minnesota;  
16 Counts II and III occurred in Dakota County, Minnesota, they  
17 are separate and distinct events, separate and distinct  
18 incidents which require a finding of probable cause to  
19 determine whether or not the charge can even go forward and  
20 that's, as I understand it, that's the purpose of a  
21 preliminary hearing or, in other words, a probable cause  
22 hearing. We're --

23 THE COURT: Go ahead, I'll let you finish your  
24 thought.

25 MR. BEHRENBRINKER: I was just going to say that

1 we're contesting Count I, and we're essentially waiving  
2 probable cause or contesting probable cause as to Counts II  
3 and III.

4 THE COURT: I think we should proceed with the  
5 probable cause portion of Count I. Ms. Brennan, are you  
6 okay with proceeding with it that way?

7 MS. BRENNAN: Yes, Your Honor.

8 THE COURT: Okay, why don't we go forward with  
9 that route.

10 MS. BRENNAN: All right. Thank you, Your Honor.  
11 The government is going to elicit testimony from one  
12 witness. That's Agent Hoisington and then we would just ask  
13 to be heard on the issue of detention after that as well.  
14 And on detention, Your Honor, we'll primarily just be  
15 arguing from the record in the bond report.

16 THE COURT: Okay.

17 MS. BRENNAN: All right. The government calls  
18 Caleb Hoisington.

19 THE COURT: Officer Hoisington, could you please  
20 raise your right hand?

21 OFFICER HOISINGTON: Yes, Your Honor.

22 **CALEB HOISINGTON,**

23 After having been sworn by the Court, testified as  
24 follows:

25 THE COURT: Go ahead, Ms. Brennan.



1 MS. BRENNAN: Thank you.

2 **DIRECT EXAMINATION**

3 BY MS. BRENNAN:

4 Q. Mr. Hoisington, can you spell your last name for the  
5 record, please, your first and last names?

6 A. Yes, ma'am. My name is Caleb Hoisington. First name  
7 C-a-l-e-b, last name is H-o-i-s-i-n-g-t-o-n.

8 Q. Thank you. What is your occupation?

9 A. I'm a special agent with the ATF.

10 Q. And that's the United States Bureau of Alcohol, Tobacco,  
11 Firearms and Explosives?

12 A. Yes, ma'am.

13 Q. How long have you been a special agent with the ATF?

14 A. Since March of 2020.

15 Q. So just over a year?

16 A. Yes, ma'am.

17 Q. And what are your duties as a special agent with the  
18 ATF, generally?

19 A. Well, as a special agent with the ATF, we primarily  
20 investigate federal firearms investigations.

21 Q. Do you have -- did you receive any training on  
22 investigations or firearms related investigations when you  
23 joined the ATF?

24 A. Yes, ma'am, I did.

25 Q. Can you describe that training?

1 A. Yep, so I spent six months at the Federal Law  
2 Enforcement Training Center in Glenco, Georgia, and three of  
3 those months, approximately half of it, was dedicated to a  
4 general criminal investigators training program where we  
5 were taught things such as Constitutional law, arrest  
6 techniques and firearms; and then the last portion of that  
7 was the ATF specific program, which is considered the  
8 special agent basic training program where we were taught  
9 more specifics about ATF's criminal investigations, such as  
10 arson and explosives, along with federal firearms  
11 violations.

12 Q. All right. You're familiar with the case we're here  
13 about today, United States of America versus Joshua Hanes?

14 A. Yes, ma'am.

15 Q. Is this what is known within ATF as an adoptive case?

16 A. That is correct.

17 Q. And, generally speaking, what's an adoptive case?

18 A. Well, an adoptive case generally refers to, so we work  
19 very closely with our state and local partners and adoptive  
20 cases where we get referred a case from our state locals,  
21 and so then I review and obtain all officer reports or lab  
22 reports, whatever that is, and then I take that and I  
23 present it to the United States Attorney's Office for  
24 federal prosecution, and if the case is then accepted, then  
25 we move forward with and then I bear responsibility of all

1 further investigative techniques and services, such as  
2 search warrants, arrest warrants, and we see through the  
3 close of the case.

4 Q. Okay. So an adoptive case is essentially a case that  
5 the ATF is picking up that was started by state or local law  
6 enforcement?

7 A. Yes, ma'am.

8 Q. And that is in contrast to a case where, for example,  
9 you would be initiating and conducting an investigation just  
10 from ATF?

11 A. That is correct.

12 Q. Okay. And so in this case, it's a case that was adopted  
13 by ATF and you're the case agent on the case, correct?

14 A. Correct.

15 Q. So as part of adopting this case, did you review the  
16 reports that were generated by local law enforcement who  
17 were involved in the events that are alleged in the  
18 Complaint?

19 A. I did.

20 Q. Okay. And did you -- are you the affiant on the  
21 Complaint, on the affidavit that supports the Complaint in  
22 this matter?

23 A. Yes, ma'am.

24 Q. Okay. And so what you're testifying about today, is it  
25 fair to say that you're testifying based on information that

1 you gathered from reviewing the reports and investigation  
2 efforts of other law enforcement agencies?

3 A. Correct.

4 Q. Okay. With respect to, I think you just heard it  
5 indicated that the defendant is waiving probable cause with  
6 respect to Counts II and III, so if we're focusing on  
7 Count I of the indictment or of the Complaint, that is an  
8 incident that occurred on December 4th of 2020; is that  
9 right?

10 A. Yes, ma'am.

11 Q. Okay. All right. So can you describe what -- let me  
12 ask you this, who was the main investigative agency on the  
13 incident that occurred on December 4th?

14 A. It was the St. Paul Police Department.

15 Q. Okay. And have you reviewed the reports that were  
16 generated as a result of that incident by St. Paul police?

17 A. I have.

18 Q. And have you also had any followup conversations with  
19 any of the officers or investigators in St. Paul?

20 A. Yes, ma'am, I have.

21 Q. Okay. So based on your review of the materials, can you  
22 describe what happened on December 4, 2020, as it relates to  
23 Mr. Hanes?

24 A. Yep. So on December 4th of 2020 at approximately  
25 10 o'clock in the morning, a 911 caller called in stating

1 that she heard gunshots in the back of her complex, and she  
2 stated that there was a maroon vehicle parked in the  
3 alleyway with an individual inside of it. So officers were  
4 dispatched to that area on Seminary Avenue, and they came  
5 across this maroon vehicle or SUV-type vehicle in the  
6 alleyway and --

7 Q. Special Agent Hoisington, did the caller say whether or  
8 not she knew if the vehicle had been involved in the  
9 shooting?

10 A. Ma'am, she said that she was uncertain whether or not  
11 the vehicle was involved in the shooting or the gun shots  
12 that she heard. She just notified 911 that there was a  
13 vehicle in the alleyway.

14 Q. All right. So what happened when officers responded to  
15 that alleyway?

16 A. So when officers came to the alleyway, they identified  
17 this maroon SUV and an individual inside of it, and they  
18 commanded the individual to exit the vehicle to which the  
19 individual, Mr. Hanes, did, and that when he got out of the  
20 vehicle, he remained standing outside of the driver's door  
21 to dig in the vehicle. According to the reports, it was he  
22 appeared to be digging in towards the passenger side of the  
23 vehicle so --

24 Q. At this point, Special Agent Hoisington, had the  
25 individual been identified as Mr. Hanes or did that happen

1 later?

2 A. That happened later on.

3 Q. Okay. He was eventually arrested, right, and identified  
4 at that time?

5 A. Correct.

6 Q. Okay. So was there anyone else in the vehicle?

7 A. No, ma'am.

8 Q. All right. So please continue with where you left off  
9 as the person Mr. Hanes was digging in the vehicle. Can you  
10 describe that a little bit more?

11 A. Yep. So, again, officers were giving verbal commands  
12 while Mr. Hanes was digging inside the vehicle and  
13 disregarding verbal commands and, again, this was a shots  
14 fired call, so officers approached Mr. Hanes, and he was in  
15 their reports making furtive movements as if he were looking  
16 for a means of escape, and they were able to detain him at  
17 that moment by his vehicle and pat search him for officer  
18 safety.

19 Q. Did they find anything when they pat searched him?

20 A. They felt a hard object within one of his pockets, which  
21 they potentially suspected to be a weapon of some sort, and  
22 so they removed that item to find a glass pipe with  
23 suspected methamphetamine residue inside of it.

24 Q. Okay. So what happened next?

25 A. So then as officers were escorting Mr. Hanes back to

1 their squad car, Mr. Hanes broke free and ran. He fled on  
2 foot, and Mr. Hanes eventually doubled back to the front of  
3 the address that he was sitting behind in the alleyway,  
4 again, an address off of Seminary Avenue, and he gained  
5 entrance into the porch and began kicking the door into the  
6 house in order to gain entry into the home.

7 Q. What happened at that point?

8 A. So officers were able to catch up to him and give him  
9 verbal commands for him to get on the ground, and Mr. Hanes  
10 complied at that moment and got on the ground, and they were  
11 able to place him in handcuffs and detain him then.

12 Q. All right. And so after Mr. Hanes was detained, what  
13 did officers do next?

14 A. They pat searched him again and found a bag of suspected  
15 methamphetamine in his coin packet.

16 Q. Okay.

17 A. And so then from there, officers escorted Mr. Hanes back  
18 to their squad car, and it was at this moment that the  
19 officers notified St. Paul PD or police department of this  
20 and that they were notified by a sergeant at St. Paul Police  
21 Department that Mr. Hanes was caught in the same vehicle a  
22 few weeks prior with two firearms recovered from that  
23 vehicle.

24 Q. Okay. Now you just testified that the officers notified  
25 St. Paul PD, I mean they were St. Paul officers, correct?

1 A. Yes, ma'am. Yep, they notified specifically the Gang  
2 Unit, Gang and Gun Unit, who was familiar with Mr. Hanes.

3 Q. I see. And so they learned that there had been an  
4 arrest. It had been in November of 2020, correct, of  
5 Mr. Hanes involving that vehicle and there were two firearms  
6 recovered at that time?

7 A. Yes, ma'am.

8 Q. So what did officers do at this point?

9 A. So they went and searched the immediate area accessible  
10 to the driver in the vehicle, and on account of Mr. Hanes  
11 previously digging in the vehicle when the officers first  
12 approached, and they discovered a bag or a purse on the  
13 front passenger floor board of that vehicle.

14 Q. Okay, and did they look inside the purse or bag?

15 A. They did, and they found a Springfield 9 mm handgun in  
16 there with an extended or a high capacity magazine with live  
17 rounds in the magazine and one in the chamber.

18 Q. Are you aware of whether that there's been any DNA  
19 testing on that firearm?

20 A. Yes, ma'am. So the St. Paul Police Department took  
21 swabs from that handgun from the textured hand grip area and  
22 the slide of that firearm and submitted it to the BCA or  
23 Bureau of Criminal apprehension for DNA testing.

24 Q. Have they gotten results from that testing?

25 A. Yes, they did, and those results are on the textured



1 hand grip, the DNA came back that Mr. Hanes could not be  
2 excluded from the major DNA mixture, and they also stated  
3 that 98.8 percent of the general population can be excluded,  
4 and they also stated that on the slide of the handgun,  
5 Mr. Hanes can also not be excluded from the major DNA  
6 mixture but 94 percent of the general population can be.

7 Q. Okay. Have you had occasion to review Mr. Hanes'  
8 criminal history?

9 A. I have.

10 Q. All right. And do you know whether Mr. Hanes has any  
11 prior convictions that would prohibit him from possessing a  
12 firearm under federal law?

13 A. Yes, ma'am, he does.

14 Q. All right. He has several felony convictions, correct?

15 A. Correct.

16 Q. And he also has a misdemeanor conviction for domestic  
17 assault; is that right?

18 A. Correct.

19 Q. And would those convictions prohibit him from possessing  
20 a firearm under federal law?

21 A. Yes, ma'am.

22 Q. Okay. And did you happen to notice whether any --  
23 whether Mr. Hanes had been sentenced to prison on any of his  
24 prior convictions?

25 A. Yes, he had been.

1 Q. And do you remember any of those convictions where he  
2 was sentenced to prison?

3 A. Ma'am, if I could reference my notes, that would be  
4 helpful on the specific sentencing.

5 Q. Well, let me just ask you, are you aware of a conviction  
6 in 2011 for Second Degree Assault With a Dangerous Weapon?

7 A. Yes, ma'am.

8 Q. And do you recall was Mr. Hanes sentenced to 39 months  
9 in prison on that conviction?

10 A. Yes, I do recall that.

11 Q. Okay. So that's back in 2011. Are you aware of whether  
12 he was convicted in 2017 on two counts of Felony Theft?

13 A. Yes, ma'am.

14 Q. And sentenced to prison for 21 months and 22 months on  
15 those counts; is that right?

16 A. Yes, ma'am.

17 Q. And in 2017, he was also convicted of Fleeing Police in  
18 a Motor Vehicle and sentenced to 17 months in prison; is  
19 that right?

20 A. Correct.

21 Q. Okay. And then also in 2017, there was one more  
22 conviction and that was Fleeing Police in a Motor Vehicle,  
23 and he was sentenced to 20 months on that one, correct?

24 A. Correct.

25 Q. Okay. And on those convictions that we just talked

1 about, those last three that were 2017-ish, is it your  
2 understanding that Mr. Hanes at least on a couple of them  
3 had, well, on all three had received stayed sentences but  
4 then those were all executed together because of probation  
5 violations in 2019?

6 A. Yes, I believe so.

7 Q. Okay. And so on his misdemeanor domestic violence he  
8 was sentenced to 90 days in jail; is that right?

9 A. Correct.

10 Q. Okay. Originally, a shorter sentence but again because  
11 of probation violations, he ended up 90 days, right?

12 A. Yes.

13 Q. So is it your understanding based on that record that  
14 Mr. Hanes was aware that he had been convicted of at least  
15 one crime that could get him sentenced by something more  
16 than a year in prison?

17 A. Yes, that is my belief.

18 Q. And based on the fact that he went to jail on his  
19 misdemeanor domestic, he was also aware that he had that  
20 conviction as well?

21 A. Yes, ma'am.

22 Q. Okay. And what type of gun was recovered from the  
23 vehicle on December 4th of 2020?

24 A. It was a Springfield XD.

25 Q. Have you had a chance to talk with a firearms expert --

1 well, let me ask you this, ATF has firearms experts, right,  
2 who are knowledgeable about where different guns are  
3 manufactured?

4 A. Correct.

5 Q. Have you had a chance to talk to a firearms expert at  
6 ATF to determine whether or not the -- where the Springfield  
7 handgun was manufactured?

8 A. I have.

9 Q. What did you learn?

10 A. That the Springfield XD handguns are manufactured  
11 outside the State of Minnesota.

12 Q. Okay. Where are they manufactured? Or where are they  
13 assembled I should say?

14 A. The XDs are manufactured in Croatia actually.

15 Q. Okay. And so based on that information, you believe  
16 that this firearm would have travelled across state lines  
17 before it arrived in Mr. Hanes' possession on December 4th  
18 of 2020?

19 A. Yes, ma'am.

20 Q. Okay. There's a lot more information that you've  
21 gathered in connection with the investigation concerning  
22 Mr. Hanes; is that correct?

23 A. That is correct.

24 Q. And you haven't testified as to every fact you know  
25 about the investigation. You just testified about facts

1 that you believe establish probable cause for Count I of the  
2 Complaint?

3 A. Yes, ma'am.

4 MS. BRENNAN: Okay. I don't have any further  
5 questions right now. Thank you.

6 Your Honor, and just to let you know,  
7 Mr. Behrenbrinker had forwarded Special Agent Hoisington's  
8 report and also a copy of the Complaint that  
9 Mr. Behrenbrinker wanted to use as exhibits in the hearing.  
10 I have forwarded those to Special Agent Hoisington, and he  
11 has those printed out so that he can answer questions about  
12 those documents should Mr. Behrenbrinker ask them.

13 MR. BEHRENBINKER: Your Honor, may I inquire?

14 COURT REPORTER: I'm sorry, Your Honor, you're on  
15 mute.

16 THE COURT: I'm sorry, I was muted there for a  
17 second. We have to go one at a time. I can see the court  
18 reporter starting to get mad at me.

19 I appreciate that, Ms. Brennan, for providing him  
20 the documents. Mr. Behrenbrinker, you can proceed with your  
21 cross-examination.

22 MR. BEHRENBINKER: Okay, thank you, Your Honor.

23 **CROSS EXAMINATION**

24 BY MR. BEHRENBINKER:

25 Q. Special Agent Hoisington, you stated that you had been a

1 special agent with the ATF since approximately March of  
2 2020, is that correct?

3 A. Yes, sir.

4 Q. And you also discussed that one of the -- I guess it was  
5 one of the first things you did after being appointed or  
6 hired into your position as a special agent with the ATF was  
7 to attend --

8 (Unidentified noise in background.)

9 MR. BEHRENBINKER: I'm getting a bunch of  
10 background noise, are you guys getting that?

11 MS. BRENNAN: It's probably from the jail. It's  
12 pretty common.

13 THE COURT: Mr. Hanes, do you see a mute button on  
14 yours so we can't hear you? You know what I'm saying?

15 THE DEFENDANT: No, there's not, Your Honor.

16 THE COURT: Okay. I think we'll just have to bear  
17 with it, Mr. Behrenbrinker.

18 MR. BEHRENBINKER: I didn't know if that was my  
19 machine screwing up or what.

20 THE CLERK: I just muted him.

21 MR. BEHRENBINKER:

22 Q. Back to my question, Special Agent, one of the first  
23 things you did after being appointed or hired into your  
24 position was to attend training put on by the United States  
25 government; is that correct?

1 A. Yes, sir.

2 Q. And I believe you testified that among other things you  
3 received training in connection with I believe you referred  
4 to is at Constitutional law, is that correct?

5 A. Yes, sir.

6 Q. Can you just -- I'm not going to go through the whole  
7 course, but I'm just curious, did the focus as far as  
8 Constitutional law, did you have a focus on the Fourth  
9 Amendment of the United States Constitution?

10 A. Yes, sir, we did.

11 Q. Are you familiar with some precedential or seminal  
12 Supreme Court cases relating to the Fourth Amendment such as  
13 search and seizure?

14 A. Yes, sir.

15 MS. BRENNAN: Your Honor, I'm going to object to  
16 this line of questioning. You know, with respect, this is a  
17 probable cause hearing on the Complaint. To the extent that  
18 Mr. Behrenbrinker wants to challenge the legality of the  
19 search of the vehicle under Fourth Amendment grounds, that's  
20 something that he can do at a suppression hearing, but it's  
21 not an appropriate line of inquiry for a probable cause  
22 hearing.

23 THE COURT: Mr. Behrenbrinker?

24 MR. BEHRENBINKER: I think it is appropriate to  
25 the extent that I'm not planning on talking to him about the

1 search, but I am planning on talking to him about the  
2 initial stop. It was a Terry stop, and I believe I have a  
3 right at this if there wasn't reasonable suspicion to stop  
4 and initially search whether you call it a protective  
5 pat-down search or what have you, it is governed by *Ohio v.*  
6 *Terry*, and he said this witness set forth in an affidavit  
7 application for a search warrant and a Criminal Complaint.

8 The purpose of this hearing, as I understand it, is  
9 to determine whether or not there's probable cause for  
10 Count I to go forward. I contend, or the defense contends,  
11 that we have a right to examine this witness to make a  
12 determination whether or not there was reasonable  
13 articulable suspicion on the part of an objective police  
14 officer to even stop Mr. Hanes in the first place, whether  
15 it be a Terry stop or a Terry investigative stop or whatever  
16 the government wants to call it. And if it isn't, which we  
17 contend there wasn't reasonable suspicion, then there can't  
18 be probable cause, and the case can't go forward, must be  
19 dismissed now.

20 THE COURT: I will overrule the objection and  
21 allow you to make a brief inquiry here.

22 MR. BEHRENBRINKER: Thank you.

23 BY MR. BEHRENBRINKER:

24 Q. As part of your training, Special Agent, were you  
25 trained in how to make a warrantless arrest?



1 A. Yes, sir, we were.

2 Q. Well, let me back up a little bit. We'll get into some  
3 of that in a little minute, but the government's attorney  
4 had you describe this case as an adoptive case. Do you  
5 recall that?

6 A. Yes, sir.

7 Q. I believe you testified when the federal government  
8 adopts a case from what you referred to as one of your state  
9 or local partners, part of your normal ordinary procedure  
10 before you present the case to the United States Attorney's  
11 Office is to read all -- is to collect, review, analyze all  
12 police reports and supplemental reports that are generated  
13 by the investigating partner; is that correct?

14 A. Yes, sir.

15 Q. And in this case here, the local partner was the St.  
16 Paul Police Department, correct?

17 A. Yes, sir.

18 Q. And so in this case, did you collect, review, analyze  
19 all police reports and supplemental reports generated by the  
20 St. Paul Police Department?

21 MS. BRENNAN: Your Honor, I object based on  
22 relevance.

23 MR. BEHRENBRINKER: In connection with this case?

24 THE COURT: You have to let him finish the  
25 question and then the objection before the answer. So you

1 object based on relevance, Mr. Behrenbrinker?

2 MR. BEHRENBRINKER: I didn't object, the lawyer  
3 for the government did.

4 THE COURT: Right. Do you have a response to her  
5 objection?

6 MR. BEHRENBRINKER: Well, it's certainly relevant  
7 because he's testified on direct examination to information  
8 that's contrary or in addition to what's in his affidavit,  
9 and I want to get into his affidavit and his reports, but I  
10 want to have a clear understanding as to what exactly he did  
11 in this case.

12 He's the case agent. He's the government's  
13 principle witness. He's their only witness today. He's the  
14 one who said that he, on direct exam, that he reviewed all  
15 reports, and he even went further than that. He followed up  
16 and talked to specific officers about any questions he might  
17 have had regarding any information in the reports. And  
18 based on that information, he has testified on direct exam  
19 here today, and I should have a right to inquire into that  
20 and to determine whether, you know, whether or not he  
21 actually followed his procedures and so on.

22 THE COURT: Ms. Brennan?

23 MS. BRENNAN: Your Honor, my response would be  
24 that he's expanding the scope and trying to somehow -- well,  
25 I don't know what he's trying to do, but I would request

1 that if Mr. Behrenbrinker has a specific question about what  
2 Special Agent Hoisington found out, he should ask that  
3 rather than reiterate or emphasize whether or not he read  
4 every single report that exists.

5 THE COURT: So in regards to the objection, I'll  
6 overrule the objection. Mr. Behrenbrinker, you can  
7 continue.

8 MR. BEHRENBINKER: Thank you, Your Honor.

9 BY MR. BEHRENBINKER:

10 Q. Did you read all of the police reports that were  
11 generated in this case?

12 A. Sir, yes, I read all that was sent to me for this case.

13 Q. Did you ask for everything?

14 A. I did.

15 Q. Did you also pick up the phone or go personally to have  
16 conversations or followup conversations with St. Paul Police  
17 Department, officers who were involved in the investigation  
18 of this case?

19 A. Officers that were involved in the investigation, yes,  
20 sir, I did.

21 Q. And was the purpose of that to ask any questions that  
22 you might have based upon your review of the information  
23 contained in the reports that you read?

24 A. Yes, sir.

25 Q. And then based upon those conversations and as well as

1 your review of all of the police reports, you prepared  
2 what's been identified and produced to your attorney as  
3 Defendant's Exhibit Number 1, and do you have that in front  
4 of you, sir?

5 A. Yes, sir.

6 Q. It's your report of investigation number one?

7 A. Yes, sir.

8 Q. You prepared that; is that correct?

9 A. I did.

10 Q. Now, the copy that your lawyer gave me is not signed or  
11 dated. Do you recall off the top of your head when you  
12 prepared this report?

13 A. Sir, off the top of my head I do not. I can reference a  
14 note and get you that date.

15 MS. BRENNAN: Your Honor, I'm going to object to  
16 the line of questioning about Special Agent Hoisington's  
17 report. We're here for probable cause on the Complaint, and  
18 so for Mr. Behrenbrinker to want to get into what Special  
19 Agent Hoisington submitted in an opening report to the  
20 government is really not relevant.

21 MR. BEHRENBRINKER: It's relevant to the extent,  
22 Your Honor, he used that report to prepare an affidavit in  
23 support of his application of a search warrant, excuse me,  
24 not a search warrant but for a Complaint and for an arrest  
25 warrant. And I'm only laying foundation for getting into

his affidavit, Your Honor.

THE COURT: Ms. Brennan?

MS. BRENNAN: Special Agent Hoisington has testified that he completed the Complaint Affidavit based on reports that he reviewed from the St. Paul Police Department and the investigating agencies. The report that he compiled, his summary in essence that he submitted to the United States to my office is something that I provided to Mr. Behrenbrinker in an abundance of caution that he would consider it to be Jencks, and so I provided it to him but I'm going to go back to the report is not what's relevant here. What's relevant is what's in the affidavit? Is there probable cause or not?

MR. BEHRENBINKER: Thank you, counsel, I appreciate that.

THE COURT: I will sustain the objection.

BY MR. BEHRENBINKER:

Q. Special Agent Huseby, referring --

THE COURT: I'm Judge Huseby not Special Agent.

MR. BEHRENBINKER: Sorry, I apologize, Your Honor. I never appeared in front of you before, and so sorry, I apologize.

THE COURT: No, you're fine, you're fine.

Q. Special Agent Hoisington?

A. Yes, sir.

1 Q. Okay. I have another question for you, Judge -- no,  
2 never mind.

3 Did you use your report in order to prepare your  
4 affidavit?

5 A. Yes, sir.

6 Q. Does your affidavit essentially track the information in  
7 your report?

8 A. It does.

9 MS. BRENNAN: Objection, relevance.

10 THE COURT: Overruled.

11 BY MR. BEHRENBRINKER:

12 Q. Now in your affidavit that's Defense Exhibit Number 2,  
13 do you have that in front of you, sir?

14 A. Yes, sir, I do.

15 Q. Okay. Looking at the introduction section, midway  
16 through the first paragraph, you state that "the facts and  
17 information contained in this affidavit are based upon your  
18 own personal investigation and observations and those of  
19 other agents and law enforcement officers involved in the  
20 investigation," did I read that correctly?

21 A. You did.

22 Q. Okay. Now, did you rely upon the information in your  
23 report as well as your conversations with St. Paul Police  
24 Department as well as your review of all of the Saint Paul  
25 Police Department reports, police reports in order to

1 prepare your affidavit?

2 A. I did.

3 Q. And is your affidavit -- was it your intent to set forth  
4 a full and complete affidavit?

5 A. Sir, it was enough to set forth to provide enough -- it  
6 was not exhaustive but it was set forth to provide enough  
7 for probable cause, yes, sir.

8 Q. And you were taught when you were trained by the ATF  
9 that it's important to have -- to prepare an affidavit  
10 that's complete, particular, articulate, so that the  
11 reviewing magistrate can make a determination as to whether  
12 or not there is in fact probable cause to either issue a  
13 search warrant, an arrest warrant or a Complaint; is that  
14 correct?

15 A. Correct.

16 Q. Now, referring to the section of your affidavit related  
17 to probable cause, that's essentially the same as what's in  
18 your report; is that correct? And as far as your report,  
19 looking at page, starting on page 2 with a subheading  
20 "December 4, 2020," paragraph numbers 12, 13, 14, I'm mostly  
21 interested in paragraph 13.

22 Did you take that information from your report  
23 almost directly or verbatim in order to prepare your  
24 affidavit for the Court?

25 A. Yes, sir.

1 MS. BRENNAN: I'm going to object again based on  
2 relevance.

3 THE COURT: Overruled.

4 BY MR. BEHRENBINKER:

5 Q. Now, you have your affidavit in front of you, sir?

6 A. I do, sir.

7 Q. Okay. Referring you to paragraph 3, it states that  
8 "your affiant learned on December 4, 2020, at about  
9 10:00 a.m., the St. Paul Police Department officers  
10 responded to an area on seminar avenue in St. Paul to a  
11 shots fired call." Did I read that correctly?

12 A. You did.

13 Q. "The 911 caller reported there was a man in a maroon  
14 vehicle in the alley but it was unknown whether or not the  
15 vehicle was involved in the shooting." Did I read that  
16 correctly?

17 A. Yes, sir.

18 Q. And are those your words?

19 A. They are.

20 Q. And those words are taken directly from your report  
21 correct?

22 A. Correct.

23 Q. And your report is based upon your review of all of the  
24 St. Paul police reports, supplemental reports as well as  
25 your conversations with St. Paul Police Department police



1 officers who were involved in the investigations; is that  
2 correct?

3 A. Yes, sir.

4 Q. Now, let's go to paragraph 4. "Officers approached a  
5 maroon Chevrolet Tahoe, Minnesota license plate 970 XHM in  
6 the alley," did I read that correctly?

7 A. You did.

8 Q. "And an individual later identified as Joshua Cameron  
9 got out of the vehicle, looked around and made furtive  
10 movements as if he were going to flee," did I read that  
11 correctly?

12 A. Yes, sir.

13 Q. Now that set was taken directly from your police reports  
14 or from your ROI number 1 based upon your review of all of  
15 the police reports from St. Paul as well as all of your  
16 conversations with the officers in St. Paul; correct?

17 A. Yes, sir.

18 Q. And to the best of your knowledge, what you wrote in  
19 paragraph 4 was truthful and accurate and to the point,  
20 correct?

21 A. Yep.

22 Q. And then going to paragraph 5, it states, "officers  
23 quickly detained Hanes and pat searched him for weapons,"  
24 correct? Did I read that correctly?

25 A. Yes, sir.

1 Q. Now, and that was taken directly from your report,  
2 correct?

3 A. Yes, sir.

4 Q. And, again, your report or ROI-1 was based upon your  
5 careful review of all of the police reports as well as all  
6 of your conversations with the investigating officers, with  
7 your local partner the St. Paul Police Department, is that  
8 correct?

9 MS. BRENNAN: Objection, asked and answered.

10 THE COURT: Sustained.

11 BY MR. BEHRENBRINKER:

12 Q. Now, going back to paragraph 3, would you agree that  
13 nowhere in your affidavit, nowhere in your report does it  
14 reference that the man who got out of -- or strike that.

15 Nowhere in your report or in the affidavit does it  
16 state that shots were fired in the back yard of the 911  
17 callers, does it, sir?

18 A. I would have to reference the -- in my affidavit and my  
19 ROI, no, it does not.

20 Q. Okay. So would you agree that you testified here today  
21 that it was reported that gun shots were in the back yard?

22 A. I believe I said that.

23 Q. But that's not what you said in the affidavit and that's  
24 not reflected in your report, correct?

25 A. Correct.

1 Q. Would you also agree that in your report, you stated  
2 that it was unknown whether or not the vehicle, that being  
3 the maroon vehicle that was parked in an alley at 10 o'clock  
4 in the morning was -- had any involvement in the alleged  
5 shooting; correct?

6 A. Yes, I stated that.

7 Q. And the reason you stated that was because based upon  
8 your investigation, based upon your review of all of the St.  
9 Paul Police Department reports and your conversations with  
10 the officers, there was no direct evidence or information to  
11 suggest or that anyone in the maroon vehicle was involved in  
12 the shooting; correct?

13 A. Besides the 911 caller's reference to it, no.

14 Q. Well, the 911 call you wrote in your affidavit states  
15 it's unknown whether or not the vehicle was involved in any  
16 shooting, correct?

17 A. Correct, but the 911 caller referenced the vehicle, yes,  
18 sir.

19 Q. Referenced that the vehicle, there was a vehicle simply  
20 in the alley at 10 o'clock in the morning and he or she had  
21 no idea or didn't have any information as to whether it was  
22 involved in the alleged shooting, correct?

23 A. Correct.

24 Q. Now according to your affidavit, when St. Paul police  
25 officers approached the maroon Tahoe, the driver of the

1 Tahoe it states got out of the vehicle; correct?

2 A. Correct.

3 Q. It states that he looked around and made furtive  
4 movements, correct?

5 A. Yes, sir.

6 Q. Okay. Now it doesn't say -- and, again, that's taken  
7 almost verbatim, if not verbatim directly from your report,  
8 correct?

9 A. Correct.

10 Q. And your report again is based upon your review of all  
11 of the police reports, as well as all of your conversations  
12 with the investigating officers at the St. Paul Police  
13 Department, correct?

14 MS. BRENNAN: Objection, asked and answered.

15 THE COURT: Overruled.

16 BY MR. BEHRENBRINKER:

17 Q. Now, when your lawyer was asking you questions, you went  
18 on quite a bit about how the driver, excuse me, how the  
19 driver got out but was not following commands, and he was  
20 digging inside the passenger side of the vehicle, do you  
21 recall that testimony, sir?

22 A. I do.

23 Q. Now, nowhere in your report and nowhere in your  
24 affidavit do you mention that when the man got out of the  
25 vehicle he was not following commands, correct?

1 A. What was that, I'm sorry?

2 Q. Nowhere in your report or your affidavit do you mention  
3 or state that when the man got out of the SUV, he refused to  
4 follow commands, correct?

5 A. Correct.

6 Q. And nowhere in your affidavit or your report based upon,  
7 again, based upon your review of the entire St. Paul  
8 investigation does it reference that the man who got out of  
9 the car was digging into the passenger side of the vehicle,  
10 correct?

11 A. Correct.

12 Q. Okay. Now, would you also agree that that's different,  
13 your testimony here today is different from what your  
14 affidavit suggests or states, would you agree with that?

15 A. Sir, I would say that my testimony was more  
16 comprehensive. The affidavit was set forth not to be  
17 exhaustive but to include enough probable cause, sir.

18 Q. Well, okay. You basically stated he made "furtive  
19 movements."

20 A. Yes, sir.

21 Q. Can you define for me what you mean or what you mean by  
22 "furtive movements?"

23 A. Yes, sir. It, from how I understand it and how I  
24 believe it is defined as more secretive motions as to an  
25 attempt to flee.

1 Q. Okay. That's pretty general and somewhat vague. Can  
2 you be a little bit more specific? What is it, what in  
3 particular that this man did when he got out of the car and  
4 was standing by the car pursuant to the command of the St.  
5 Paul Police Department would be a furtive movement?

6 A. Per the reports, I read, sir, they referenced his  
7 shiftiness, looking around, looking in different directions,  
8 not looking in the direction of the police officers.

9 Q. Shiftiness? What did he do that would be shifty?

10 A. Again, sir, I was not at this incident. Just per the  
11 reports was his body language and, like I said, sir, I'm not  
12 sure how else you want me to define it as to simply looking  
13 around.

14 Q. Okay. Well, you're the one, you used "furtive  
15 movements" as your term of art in order to establish  
16 probable cause in your affidavit, did you not?

17 A. I did.

18 Q. All right.

19 MS. BRENNAN: Your Honor, I'd like to object at  
20 this point, and renew my objection based upon to the extent  
21 that Mr. Behrenbrinker is inquiring of the witness in order  
22 to challenge based on Fourth Amendment grounds, it's not  
23 appropriate in this proceeding. And if you look at Rule 5.1  
24 of the Rules of Criminal Procedure on preliminary hearings,  
25 it specifically states in 5.1E that at the preliminary

1 hearing, the defendant may cross examine adverse witnesses  
2 and may introduce evidence but may not object to evidence on  
3 the ground that it was unlawfully acquired. It explicitly  
4 says we're not going into Fourth Amendment search and  
5 seizure at the preliminary hearing. The purpose of the  
6 hearing is to determine whether there's probable cause to  
7 believe that the defendant had that gun.

8 THE COURT: Mr. Behrenbrinker?

9 MR. BEHRENBRIKER: This is probable cause  
10 hearing, Your Honor. That's the whole purpose of the  
11 preliminary hearing is to determine whether or not there is  
12 probable cause. In this instance, we have the government's  
13 witness who is their case agent who was sent here to testify  
14 to establish, to justify the stop. That's his whole  
15 function. That's why he's here today. It's the  
16 government's burden to show that there was reasonable  
17 suspicion in order to make a Terry stop and a Terry  
18 pat-down.

19 Now, I have a right to examine this witness  
20 concerning what articulable facts, what about, what is it  
21 about the totality of the circumstances, which would give an  
22 objective person a reasonable suspicion to believe that the  
23 driver was either engaged in criminal activity or was about  
24 to engage in criminal activity. That's what the Supreme  
25 Court said in *Terry*.

1           Moreover, in this particular case, in his  
2           affidavit, he states because of furtive movements, they  
3           quickly detained Hanes. They quickly seized him based on  
4           furtive movements, then they did a pat-down. That's a  
5           search in Ohio or *Terry v. Ohio*.

6           And what -- this special agent has not testified,  
7           the government hasn't produced any evidence to suggest that  
8           there was a reasonable person would fear for their own  
9           personal safety to do a safety -- number one, to seize him  
10          and then to do a safety pat-down search. All required by  
11          *Terry v. Ohio*. This is the appropriate venue to raise these  
12          issues. I'll stop there.

13          THE COURT: I will overrule the objection. We  
14          need to make some progress here though. It seems like we're  
15          spinning our wheels.

16          BY MR. BEHRENBRINKER:

17          Q. Can you -- all right. Special Agent, referring you to  
18          paragraph 5 of your affidavit, sir.

19          A. Yes, sir.

20          Q. "Officers quickly detained Hanes and pat-down searched  
21          him for weapons." Are you aware of any, or strike that --  
22          would you agree in your affidavit, you do not make any  
23          statement concerning whether or not the officers had any  
24          fear for their personal safety at that time?

25          A. Referencing my affidavit, I do not make that statement.



1 Q. Okay. Your report that you used to prepare your  
2 affidavit, again, based upon your review of the entire St.  
3 Paul Police Department file, does not make any reference to  
4 any facts to support the notion that the officers had a  
5 reasonable fear for their safety at the time they seized him  
6 and did the search, correct?

7 A. Correct.

8 Q. And as far as -- strike that.

9 Why did you use the term "furtive movements?"  
10 What did you --

11 MS. BRENNAN: Objection, asked and answered.

12 THE COURT: Sustained.

13 MR. BEHRENBRIKER: Okay. I don't have any  
14 further questions at this time, Your Honor.

15 THE COURT: Does the government have any further  
16 witnesses in regards to probable cause?

17 MS. BRENNAN: I don't, Your Honor.

18 THE COURT: With regard to detention, does the  
19 government are they continuing their motion for detention?

20 MS. BRENNAN: Yes, we are.

21 THE COURT: And you indicated that you'll be  
22 presenting your argument or presenting your position for  
23 detention on argument versus additional witnesses?

24 MS. BRENNAN: Yes, Your Honor.

25 THE COURT: Okay. Mr. Behrenbrinker, do you have

1 any witnesses in regard to the detention?

2 MR. BEHRENBRINKER: No, I don't, Your Honor.

3 THE COURT: Okay. Go ahead, Mr. Behrenbrinker.

4 MR. BEHRENBRINKER: I would like to be heard on  
5 the issue of detention, however, Your Honor. And if it  
6 pleases the Court, I would like to be heard briefly if we're  
7 finished with witnesses in connection with the preliminary,  
8 I would briefly like to argue our position.

9 THE COURT: Prior to the issue of detention, you  
10 would like to have a brief argument in regard to probable  
11 cause?

12 MR. BEHRENBRINKER: Yes, sir.

13 THE COURT: That's fine. That's fine.

14 Ms. Brennan, I'll let you go first as far as the  
15 issue of probable cause.

16 MS. BRENNAN: Okay, thank you.

17 Your Honor, I do have a quick question on redirect  
18 of the special agent?

19 THE COURT: I'm sorry. I'm going to have to back  
20 up. You have a right to redirect, and I should have allowed  
21 you to have that, and I'll let you proceed with that at this  
22 point, if you'd like.

23 MS. BRENNAN: Thank you, Your Honor. I'm just  
24 going to keep this really brief.

25

**REDIRECT EXAMINATION**

BY MS. BRENNAN:

Q. First of all, Special Agent Hoisington, Mr. Behrenbrinker referred to me as your lawyer. Am I your lawyer?

A. No, ma'am, you are not.

Q. Okay. You understand I represent the United States, right?

A. That is correct.

Q. Okay. When you prepare your report that you submitted to my office in connection with this case, what is the purpose of that opening ROI that you prepare for us?

A. Ma'am, it is primarily -- I mean the purpose of it is to primarily to present to you a summary of the facts from these cases.

Q. Okay. So in addition to submitting this summary that you prepare to us, do you also provide my office with all of the underlying reports that are the actual reports from the incidents?

A. I do, yes.

Q. Okay. And are there things that are listed in the underlying reports that aren't always in your summary?

A. Absolutely.

MS. BRENNAN: Okay, no further questions.

THE COURT: Recross?

1 MR. BEHRENBINKER: Just briefly.

2 **RECROSS EXAMINATION**

3 BY MR. BEHRENBINKER:

4 Q. The affidavit that you prepare in support of the  
5 Complaint, you prepared that based on your review of your  
6 report as well as all of the other investigation materials  
7 that you had available; correct?

8 A. Correct.

9 Q. And the purpose --

10 MR. BEHRENBINKER: And that's all I have, thank  
11 you.

12 THE COURT: Ms. Brennan, anything further?

13 MS. BRENNAN: No, Your Honor, thank you.

14 THE COURT: Then I'll allow you a brief or I  
15 shouldn't say a "brief," I'll allow you an argument in  
16 regards to probable cause at this point.

17 MS. BRENNAN: Okay. Thank you, Your Honor.  
18 Before I make my argument, I'd like to just ask the Court  
19 what its intention is on this Fourth Amendment issue that  
20 Mr. Behrenbrinker intends to argue, and what I would request  
21 and urge the Court is not make a finding on that.

22 I think that that is an issue that is going to be  
23 litigated at the next stage of these proceedings in  
24 connection with pretrial motions. It is typically the  
25 searches and the stops in a case like this. The government

1 would bring in the witnesses who were present for the stop  
2 and the search and, you know, fully develop the record on  
3 that so that the Court can make a, you know, an informed  
4 finding.

5 And, again, Rule 5.1E indicates that that is not  
6 what is supposed to happen at this juncture, and so I would  
7 urge the Court to refrain from addressing that and to  
8 instead focus on whether there is evidence establishing  
9 probable cause that Mr. Hanes.

10 THE COURT: My job today is to determine probable  
11 cause whether or not this can be sent over, and I will also  
12 make a determination as to detention, so that's where I'm at  
13 with this.

14 MS. BRENNAN: Thank you.

15 THE COURT: I'm not expanding it beyond what I  
16 should be expanding it to.

17 MS. BRENNAN: Thank you, Your Honor. With respect  
18 to probable cause, the evidence shows there was a report of  
19 a gun shot, unclear whether this vehicle may or may not have  
20 been involved in it, but officers arrived on scene.  
21 Mr. Hanes is there in a vehicle, and when he is removed from  
22 the vehicle, he tries to flee from officers and then  
23 officers find inside the vehicle a gun, and the gun has  
24 essentially has his DNA on it. His DNA cannot -- he cannot  
25 be excluded from being a contributor to the DNA that was

1 found in two places on that gun. In one place, 98.8 percent  
2 of the population can be excluded. In another place on the  
3 gun, 96 percent of the population can be excluded.

4 Given all of the circumstances here, there is  
5 probable cause that on December 4th of 2020, Mr. Hanes  
6 possessed a firearm. And also the evidence shows that  
7 Mr. Hanes is a prohibited person, that he's been previously  
8 convicted of felonies. The Court can see that from the bond  
9 report as well, and Mr. Hanes was aware that he had been  
10 convicted of felonies because he had actually served prison  
11 sentences of longer than one year.

12 And, finally, the evidence shows that there is  
13 probable cause to believe that the firearm travelled in  
14 interstate commerce and, therefore, the interstate nexus has  
15 been established.

16 THE COURT: Thank you. Mr. Behrenbrinker?

17 MR. BEHRENBRINKER: Thank you, Your Honor.

18 The threshold question that really the Court needs  
19 to address in terms of this probable cause hearing today  
20 relating to Count I of the Complaint is whether the specific  
21 facts that led to the Terry stop would lead an objective  
22 person to form a reasonable suspicion that Mr. Hanes was  
23 engaged in criminal activity.

24 The general rule, as the Court is well aware, and  
25 I'm sure counsel for the United States is as well, under the

1 Fourth Amendment, an officer may not generally under the  
2 Fourth Amendment may not seize a person. An officer may not  
3 seize a person without a warrant, I should say, unless  
4 there's an exception to the warrant. Those exceptions are  
5 narrowly drawn exceptions.

6 One exception is the Terry investigative stop.  
7 But the question is under *Terry v. Ohio* exception, an  
8 officer must have reasonable suspicion that that person is  
9 about to or is engaged in criminal activity. An officer may  
10 also briefly frisk a person if that person -- if that  
11 officer, excuse me, has reasonable safety concerns to  
12 justify a protective frisk. Officers must have reasonable  
13 suspicion based on specific and articulable facts known to  
14 the officers at the time at the inception of the stop, not  
15 later, not after the events that most of the issues that the  
16 government wants to talk about. It's what the officers knew  
17 at the inception of the stop.

18 What, you know, in this particular case, this  
19 special agent prepared the affidavit. All he could put in  
20 his affidavit, he's trained, he knows how to prepare an  
21 affidavit, how to establish probable cause. He testified  
22 what he reviewed. He testified who he talked to. He's the  
23 case agent on the case. He's the person who is supposed to  
24 be and is most knowledgeable concerning the underlying facts  
25 and background of this case.

1           He used the term "furtive movements." "Furtive  
2 movements," Your Honor, is a catch phrase. It's a vague  
3 term. It's vague, and it's generalized. And standing  
4 alone, I submit that "furtive movement" is so vague, so  
5 generalized, it's unreliable.

6           He testified here today different. It's not in  
7 his report what he testified. He admitted that. In his  
8 report he testified was based upon all of his review of the  
9 entire St. Paul Police Department file as well as followup  
10 conversations with officers that he had particular input,  
11 from that he made an affidavit.

12           There's no detailed description as to what it is  
13 that this man did to give the officers a reasonable  
14 suspicion that he was either involved in criminal activity  
15 or about to engage in criminal activity. The witness here  
16 today could not state one fact. He was not aware of one  
17 fact which would give a reasonable officer, an objective  
18 officer, a reason to believe that his personal safety was in  
19 danger for him to make a seizure and a protective patdown  
20 search. Not one fact.

21           On those grounds, based upon the affidavit, based  
22 upon the testimony, based upon the law, Count I should not  
23 go forward. The government has not met its burden. The  
24 stop was not constitutional. It was illegal. The  
25 protective pat-down search was not legal, and for that



1 reason, Count I should be dismissed. Thank you, Your Honor.

2 THE COURT: Thank you.

3 Ms. Brennan, in regards to detention?

4 MS. BRENNAN: Your Honor, I'm going to argue  
5 primarily from the bond report, but even before I get to the  
6 bond report, if you just look at the two counts alleged in  
7 the affidavit, the circumstances surrounding Mr. Hanes'  
8 arrest on December 4th and then again the circumstances  
9 surrounding his arrest on March 22 of 2021. In both cases,  
10 he attempted to flee from police.

11 In the first case, on December 4th, he runs away  
12 from the police, breaks free as they're leading him to the  
13 squad car, he runs away. He tries to get in a nearby  
14 residence.

15 On March 22 of 2021, he's being surrounded by a  
16 marked squad car trying to effectuate a traffic stop before  
17 he gets onto the freeway, and he rams into one of the squad  
18 cars and then continues to disobey their commands for a  
19 period of time before he finally exits the vehicle and can  
20 be apprehended.

21 If you look through the bond report, there are  
22 numerous instances of motor vehicle fleeing. He's been  
23 charged numerous times with fleeing police in a motor  
24 vehicle. He's been convicted at least twice, I believe, of  
25 motor vehicle fleeing in 2017. In 2018, he was convicted of

1 motor vehicle fleeing.

2 He's got one pending case, actually, he's got two  
3 pending cases of motor vehicle fleeing that we haven't even  
4 talked about. He's got one pending from November 19th of  
5 2020, and another case pending from February 7th of 2021.  
6 Both of those are motor vehicle fleeing police.

7 He's got convictions for crimes of violence. He's  
8 got convictions for controlled substances. One crime of  
9 violence, I should be clear. He was convicted of second  
10 degree aggravated assault in 2011.

11 In 2007, he was convicted for aiding an offender  
12 after the fact. The underlying case there was a homicide  
13 case. He's got multiple failures to appear on multiple  
14 cases throughout the years as demonstrated in the bond  
15 report.

16 I did -- I tried to go through the bond reports  
17 pretty carefully because I know that sometimes a defendant  
18 will get a failure to appear when they're in custody in  
19 another jurisdiction, even if you take a couple of those out  
20 of the bond report, he has multiple failures to appear in  
21 those cases.

22 So, Your Honor, and if we just even look at the  
23 charges that Mr. Hanes has pending right now, he's got five  
24 pending felony cases since November of 2020. So that's the  
25 last six months alone. He's got a pending November 11,

1 2020, pending felony ammunition. November 19th, motor  
2 vehicle fleeing. December 4th, same as what's listed in our  
3 Complaint at Count I. February 7th, receiving stolen  
4 property and fleeing in a nonmotor vehicle fleeing.

5 And in that case, February 7th, by the way, it was  
6 Mr. Hanes' is alleged to have jumped in a car that was being  
7 driven by a female acquaintance and telling her to take off,  
8 so it was motor vehicle fleeing, but he was a passenger.

9 He's got the March 22 case pending also in State  
10 Court. And he's got -- I'm sorry, that's March 22nd, he's  
11 not charged in State Court, but he's obviously charged here.  
12 That was just a PC arrest. And then on April 16th, which  
13 was after that and just about one month ago, he has a  
14 pending second degree assault with a dangerous weapon,  
15 threats of violence, and first degree damage to property,  
16 risk of bodily harm. And in that April 16th case, he is  
17 alleged to have assaulted an ex-girlfriend or a current  
18 girlfriend or acquaintance and then attempted to run her off  
19 the road using his vehicle ramming into her vehicle when she  
20 was trying to go to the doctor and seek medical attention.  
21 Those are the allegations in that Complaint.

22 Your Honor, I think it's clear that Mr. Hanes,  
23 there are no condition or combination of conditions that  
24 would assure the safety of the community and the defendant's  
25 reappearance in these court proceedings if he is released.

1           Also, on the drug count, on Count II of the March  
2           22, 2021 incident, there is a presumption in favor of  
3           detention based on that, the allegations in that count,  
4           which is five year mandatory minimum, 20-year stat max on a  
5           methamphetamine charge.

6           So, Your Honor, based on the record as a whole, we  
7           would respectfully ask the Court to detain Mr. Hanes pending  
8           trial, pending further proceedings.

9           Your Honor, you're muted.

10          THE COURT: I'm sorry, I had some outside noise on  
11          the other side of my door here so I had to mute myself.

12          Thank you, Ms. Brennan. Mr. Behrenbrinker?

13          MR. BEHRENBRIKER: Thank you, Your Honor. We  
14          have had an opportunity to review the pretrial services  
15          report, and we don't have any disagreement that Mr. Hanes  
16          has a very significant prior criminal history. He has been  
17          convicted, I believe, at least seven times for felonious  
18          type offenses. He has been to prison. He has been to jail  
19          lots of times. He has committed lots of driving, lots of  
20          other types -- driving offenses, driving after revocation,  
21          so on, and so on, but he has serious felonious type  
22          offenses.

23          We don't dispute that. And we don't dispute that  
24          the charges that he's facing here are very serious. We've  
25          discussed that. My point is, Your Honor, is that given -- I

1 don't know if the Court is aware of, I think the government  
2 is but I'm not sure that the Court is, the physical  
3 condition that Mr. Hanes is in right now.

4 In I believe it was the third week of April or the  
5 middle part of April, he was coming out of a restaurant on  
6 the east side of St. Paul called Magnolia's, his adult  
7 sister is a waitress, that's not the right word, she works  
8 there, and he was shot, a drive-by shooting, was shot four  
9 times. He was taken by ambulance to Regions Hospital. He  
10 underwent nine hours of orthopedic surgery. He was shot in  
11 his lower left leg twice. He was shot in his right hip  
12 once. He was shot in his right arm once. He has plates and  
13 rods and screws holding his bones together.

14 After a nine hour surgery, he was hospitalized  
15 for, I believe, 10 days, approximately. I may be mistaken  
16 on that. And he needs to go through -- needs physical  
17 therapy. He was on oxycodone for pain 21 days. That  
18 prescription ran out and won't be renewed because of the  
19 dangers associated with addiction of that very severe but  
20 effective pain killer.

21 He's in a wheelchair now. When he was initially  
22 released from Regions Hospital, he was taken to the Ramsey  
23 County Jail for an outstanding arrest warrant. The Ramsey  
24 County Jail looked at him, evaluated him, decided jail was  
25 not the right place for him because we can't take care of

1 him. We can't provide him with what he needs as far as  
2 reasonable, necessary medical care and treatment.

3 He needs to have a high protein diet because of  
4 his broken shattered bones that are now held together,  
5 literally, with plates, rods and screws. He needs physical  
6 therapy.

7 Presently, his, which he could not get at the  
8 Ramsey County Jail, so what was their response to his  
9 dietary, physical therapy and medical needs, was they moved  
10 him to the Ramsey County workhouse. Why? Because they  
11 could give him what they could get him. They could provide  
12 him what he needs, reasonable and necessary dietary and  
13 medical care and treatment including physical therapy.

14 It's my understanding that the physical therapist  
15 services came out from Regions to the Ramsey County  
16 Workhouse in order to give him and provide him with the care  
17 and treatment that he needs in order to recover from his  
18 injuries.

19 He's still in a wheelchair. He's not given any  
20 type of a special diet, not getting physical therapy. He's  
21 not getting assistance. He's got one arm that he -- I  
22 believe it's his left arm that he can use. He's in a cell  
23 to use the toilet. He has one arm. He has a cast on his  
24 right leg. He's got bandage and so on.

25 THE COURT: Mr. Behrenbrinker, we need to stop for

1 just a second. Your client is waving his hands here. Could  
2 you unmute him for a second there, Mr. Hanes?

3 MR. BEHRENBRINKER: I think the court reporter --

4 THE CLERK: It looks like it lets me mute, but it  
5 doesn't let me unmute. He might have to ask someone at the  
6 jail.

7 MR. BEHRENBRINKER: Oh, boy, good luck with that.

8 THE COURT: Okay, Mr. Hanes?

9 THE DEFENDANT: Yes, Your Honor.

10 THE COURT: Okay, you were waving your hands, was  
11 there something you needed to bring to our attention?

12 THE DEFENDANT: Yes, it's about my right leg, Your  
13 Honor. It's my left leg that's in the cast right now. It's  
14 my right leg that's got plates in it and rods and stuff in  
15 it, but it's my left leg that has a cast, Mr. James. I just  
16 wanted to make sure you got it right.

17 MR. BEHRENBRINKER: Okay, sorry.

18 THE DEFENDANT: That's all right.

19 MR. BEHRENBRINKER: So you have rods in your left  
20 leg and a cast on your right leg?

21 THE DEFENDANT: No, I have a cast on my left leg  
22 and I got rods in my right leg.

23 MR. BEHRENBRINKER: Okay, sorry. Why is there a  
24 cast on your left leg?

25 THE DEFENDANT: Because I've been shot two times,

1       sir. I've been shot two times in my left leg, and I can't  
2       put no pressure on my left leg.

3               MR. BEHRENBRINKER: I got it. I understand.

4               THE DEFENDANT: Okay.

5               MR. BEHRENBRINKER: Okay. So basically both legs,  
6       Your Honor, are disabled right now from the shooting. So he  
7       basically has one good arm and that one good arm, he has to,  
8       and it's not his prominent arm, it's his left arm that he  
9       has to try to get himself from his wheelchair to the toilet.  
10      And this past Sunday he hadn't had a shower since arriving  
11      at Sherburne. That was the government's response, you know,  
12      they pick him up at the Ramsey County Courthouse or the  
13      Ramsey County Workhouse and get him shipped out to Sherburne  
14      County, where I spoke to Commander Carr last evening, and he  
15      confirmed that to date they haven't provided any, the  
16      Marshal's service and the United States government hasn't  
17      done anything to ensure that he gets physical therapy, gets  
18      proper medical care. It's building up to almost a  
19      deliberate indifference toward his clear medical needs to  
20      just ignore him.

21              We agree, we're not disputing, I'm not disputing  
22      any of the laundry list, the litany of offenses that the  
23      government has set forth. We're just saying, as far as this  
24      detention hearing is concerned, Your Honor, Sherburne County  
25      Jail isn't the right place for him given his more than



1 significant, severe physical limitations. He needs to have  
2 these dietary physical therapy. Which is it your left or  
3 right arm that is numb from your --

4 THE COURT: Mr. Behrenbrinker, do you want to call  
5 your client as a witness or are you preparing an argument?

6 MR. BEHRENBRINKER: Well, I can put him on.

7 THE COURT: Would you like to call your client as  
8 a witness?

9 MR. BEHRENBRINKER: Yes, Your Honor, I will.

10 THE COURT: Mr. Hanes, would you raise your right  
11 hand, please?

12 THE DEFENDANT: Yes, Your Honor.

13 **JOSHUA HANES,**

14 After having been duly sworn, testified as  
15 follows:

16 THE COURT: Go ahead, Mr. Behrenbrinker.

17 MR. BEHRENBRINKER: Okay, thank you, Your Honor.

18 **DIRECT EXAMINATION**

19 BY MR. BEHRENBRINKER:

20 Q. Mr. Hanes, around the middle part of April or  
21 thereabouts, you were shot as you were leaving or entering  
22 the Magnolia Restaurant in St. Paul; is that correct?

23 A. Mr. James, I didn't get to even answer the main question  
24 yet, sir, but I was going there to get my food, yes, I was,  
25 sir.

1 Q. And is that where your sister works?

2 A. Yes, that's where my sister works.

3 Q. What's her name?

4 A. Ashley Hanes.

5 Q. Ashley?

6 A. Yes.

7 Q. Okay, now Ashley --

8 A. Sir, I'm sorry, but just the thought of me getting shot  
9 because it hurts my head, and it hurts me so much. It was  
10 traumatic. It was traumatic to my head because all that  
11 thinking about getting shot, man, I'm just glad to be alive  
12 today, but every time I think about it, it kind of hurts me.  
13 I'm sorry for crying and stuff but that's just me keep  
14 going. I just want to let you guys know don't mind my  
15 tears.

16 Q. Well, I advised the Court based on our conversation that  
17 you had been shot four times, is that true?

18 A. Yes, yes, yes, James.

19 Q. And you were shot two times in the left leg; is that  
20 correct?

21 A. Yes, in my lower left shin, yes, it is.

22 Q. And were the bones shattered?

23 A. They were shattered, man. I remember looking down at  
24 them, James, and I remember seeing my bone sticking out of  
25 my skin.

1 Q. Okay. And in your left leg, were you also shot in the  
2 right hip?

3 A. Yes, yes, sir. I was shot --

4 Q. One time in the hip?

5 A. One time in the hip, went through my hip, shattered my  
6 hip and came out my butt.

7 Q. And then you were also shot in your right arm, is that  
8 correct?

9 A. Yes, sir, right here. I don't know if you guys can see  
10 it or not, man. That's where my plate went in, but that's  
11 where the exit wound is, and this is where the entry wound  
12 is.

13 Q. Okay. Now, based upon that being shot, was this a  
14 drive-by shooting?

15 A. Yes, sir.

16 Q. Did you have any idea or do you know who it was that  
17 shot you?

18 A. I have no idea who it was, sir, I just remembering  
19 seeing someone --

20 Q. Were you involved in any type of altercation or an  
21 incident with these people beforehand?

22 A. No, sir. No, sir.

23 Q. Okay. Were you taken by ambulance to Regions Hospital?

24 A. Yes, I was.

25 Q. Did you undergo orthopedic surgery there?

1 A. For nine hours.

2 Q. Okay.

3 A. For nine long hours and the doctor said he was surprised  
4 that I even came through with the way they fixed me up.

5 Man, I'm blessed that they fixed me up, you know, to where I  
6 still have my limbs.

7 Q. Do you have orthopedic metal plates, rods and screws in  
8 your left leg?

9 A. Everywhere I got shot, sir, is where I got plates, shots  
10 or screws. I got rods and a plate in my left shin. I got a  
11 rod in my right hip, and I got a plate in my right arm,  
12 sir. I'm pretty sure that's what it is, but I'm not  
13 positive, so don't quote me on that. You guys that look at  
14 my medical forms and stuff.

15 Q. Okay. When did you arrive at Sherburne County, do you  
16 know?

17 A. Sometime, what was it, Friday morning, Friday afternoon  
18 I should say. Yeah, Friday afternoon.

19 Q. Immediately after your initial appearance?

20 A. Yes, sir.

21 Q. Okay. And had you been at the Ramsey County Workhouse  
22 before that?

23 A. Yes, sir.

24 Q. How long had you been at the Ramsey County Workhouse?

25 A. I was at the Ramsey County Workhouse for probably less

1 than a week.

2 Q. Did you go directly essentially from Regions Hospital to  
3 the Ramsey County Workhouse?

4 A. Yes, sir.

5 Q. Was there a brief stay at the Ramsey County Jail first?

6 A. No, sir. They seen me, and they said we can't house me  
7 because of my conditions.

8 Q. Okay. Are you in a wheelchair because the doctors at  
9 Regions put you in a wheelchair?

10 A. Yes, sir, they wanted me in a wheelchair because they  
11 don't want me to -- I can't put no pressure. I got heel to  
12 toe no pressure on my left foot, where basically I only got  
13 one leg right now, but I really don't want to have one leg  
14 because it's hard for me to lift that leg up, man. This is  
15 crucial.

16 Q. Do you have a cast on your leg?

17 A. Yes, I got a cast on my leg right now, sir.

18 Q. And is that on your?

19 A. My left leg.

20 Q. Left leg?

21 A. Yeah.

22 Q. Now at Sherburne, are you still locked down 23 hours a  
23 day?

24 A. Yes, sir, man, crucially 23 hours a day, man, this is  
25 hell over here, man. I can't even, I can't get out of bed.

1 Q. Are you in lock down because of the pandemic protocol --

2 A. Yes, sir.

3 Q. -- because you were just brought in?

4 A. Yep, yes, sir. I can't do nothing about that.

5 COURT REPORTER: I'm sorry, just one at a time,  
6 please.

7 THE DEFENDANT: I'm sorry, Ms. Weinbeck.

8 BY MR. BEHRENBRINKER:

9 Q. Is your doctor, your orthopedic surgeon at Regions, has  
10 he ordered that you received physical therapy?

11 A. Yes, sir.

12 Q. Are you receiving physical therapy?

13 A. No, sir.

14 Q. Were you receiving physical therapy at the Ramsey County  
15 Workhouse?

16 A. Yes, sir.

17 Q. How are you getting it? Who is providing it?

18 A. I'm not sure, I forgot what his name was, but I met him,  
19 I met him it was that Thursday before I came here, and I met  
20 him that day, and he's supposed to come meet me yesterday  
21 back there, but I ended up coming over here and stuff. I  
22 can't remember what his name is. It's hard for me to  
23 remember names, sir.

24 Q. Was he through the workhouse or was he through Health  
25 Partners Group Health or HealthPartners Regions?

1 A. I want to say it was through both of them, but he does  
2 DOC, so it has to be through the jail or something.

3 Q. Okay. How often do you need to see a physical  
4 therapist?

5 A. A couple times, when I was in the Regions Hospital, I  
6 was seeing a physical therapist every day. They come in,  
7 they get me up, stretch me out, get me up to show me how to  
8 walk and do the things I need to do like get on a sliding  
9 board, how to get out of bed, how to sit in my wheelchair,  
10 you know.

11 They get me in my shower. They helped me with my  
12 showers and because my showers I needed the help because I  
13 can't, I can't -- this is my hand, my right hand right here.  
14 I can't feel nothing from here to here. You know, I don't  
15 know what --

16 Q. Are you supposed to get hand physical therapy or hand  
17 therapy as well?

18 A. Yeah, because I'm supposed to have my little ball, they  
19 said the physical therapist gave me a ball to squeeze  
20 because, you know, I can barely pick this -- look, I can  
21 pinch this to pick this up. (Witness indicates).

22 Q. Did anybody tell you that the numbness or the weakness  
23 is because of nerve damage resulted from either getting shot  
24 or the invasive surgery that you underwent?

25 A. Yes, sir.

1 Q. Okay. And will that come back do you know, or is it if  
2 you have the physical therapy that you need?

3 A. It's just kind of got to take it day by day, sir, to see  
4 if it ever come back, and I can't feel nothing in my hand  
5 right now. Actually, it's all the way to these two fingers,  
6 I can't feel nothing. See, this is the farthest I can open  
7 my hand. This is as much as I can squeeze. I can't squeeze  
8 nothing. (Witness indicates)

9 Q. So besides your physical needs, did your doctors at  
10 Regions, did they tell you anything about the type of diet  
11 you should have given the nature of your injuries and  
12 recovery and so on?

13 A. Yes, sir. When I was at Regions Hospital, they had me  
14 on a high protein diet, so every time I had my meal they had  
15 me on a certain kind of milk that had a lot of protein in  
16 it. It had like 30 grams of protein, and then in between  
17 meals they give me two milks, two milks to drink, so I get  
18 six milks a day and then I get a snack at night, you know,  
19 with my meds and everything because I was on a lot of meds,  
20 and I still am on a lot of meds at the same time, sir.

21 Q. Okay. What are you taking now? What do you get for  
22 pain at Sherburne?

23 A. Man, Tylenol. Tylenol. They're giving me Tylenol for  
24 these pains. They said they got me on four different kind  
25 of pain meds, which is like Gabapentin, the Tylenol, and I



1 can't remember what the other two are, but they took me off  
2 four other ones I should be on right now.

3 Q. Where are you talking about? Who took you off?

4 A. Sherburne County did because they said that the ones  
5 that I have are the ones that they're just too potent or  
6 something, sir, but they give me my oxys but they won't give  
7 me my Flexerils.

8 You know, I think oxycontin, the oxycodone or  
9 whatever they are, I think they're more potent than the  
10 Flexeril because the Flexeril, they help my muscles, they  
11 help relax my muscles.

12 Q. I thought you were off the oxy now? I thought your  
13 prescription --

14 A. Yes, I am off the oxy now. Yes, I am, sir. I've been  
15 off the oxy now for about three or four days.

16 Q. Okay. You used to be on Flexeril though, is that right?

17 A. Yes, sir.

18 Q. Flexeril is the muscle relaxant to help you sleep?

19 A. Yes, sir.

20 Q. They're not giving that to you?

21 A. No, they're not. No, sir.

22 Q. And the reason they said it's too powerful or something?  
23 They don't have that in the institution or what?

24 A. I don't know, they took it away because they say it's a  
25 high, it's a high medication or something like that. I

1 can't, I can't remember the words that they used, but I  
2 talked to the nurse earlier today. She said that it's kind,  
3 it's kind of rare that they give people Flexeril because  
4 it's a highly medication.

5 Q. What else, is there anything else you're supposed to be  
6 taking?

7 A. I'm supposed to be taking like my psych meds that keep  
8 me calm, you know, because like I try not to think about.

9 Q. Yeah, are you getting those?

10 A. I don't think I am, sir. I'm not getting my sleeping  
11 meds either. They took my sleeping meds away from me, too,  
12 so I'm not getting no sleep in here at all. It's hard for  
13 me to sleep in here because I got so much pain. I wake up  
14 in the middle of the night, you know, and I be needing my  
15 pain meds in the middle of the night like I used to be  
16 getting them.

17 Q. Right. Do you get any help for taking showers?

18 A. Man, Mr. James, they gave me one shower since I've been  
19 here. You want to know what they did? They gave me a bag,  
20 right, they gave me a bag, they told me to go take a shower.  
21 I said, "Hey, I need a wrap. We got to wrap this up so my  
22 cast don't get wet."

23 You want to know what kind of tape they came back  
24 with, Mr. James and Your Honor? They came back with Scotch  
25 tape. Man, they came back with two pieces of Scotch tape

1 this long, and, man, they told me to stick my foot outside  
2 of the shower curtain and expect me not to get that wet. So  
3 as I'm taking a shower and I get out, man, I take that off.  
4 It got moist, right, my cast got moist.

5 Well, later on in the day all of a sudden my cast  
6 is coming off, and I feel like my whole ankle is swelling  
7 in, so my cast comes off. And I showed you the other day,  
8 James, what my cast looked like the other day. Man, my cast  
9 looked like hell. It looked like hell, man. I didn't get  
10 no medical attention until today, earlier today, they  
11 finally put a little ace bandage to wrap it up again, man,  
12 and I don't know what's going on man, but that's as much  
13 medical attention they gave me.

14 You know, every time I send a kite to them about  
15 something, man, they send me a letter back or something  
16 saying that it's basically it declined, declined, declined.  
17 You know, all I'm asking is I just want to get the medical  
18 attention so I can heal right.

19 Q. Okay. You mentioned your sister works at --

20 A. Magnolia's.

21 Q. What's her name again?

22 A. Ashley Hanes.

23 Q. Who old is Ashley?

24 A. She's 31.

25 Q. 31. Okay.

1 MR. BEHRENBRINKER: I don't have any further  
2 questions, Your Honor.

3 THE COURT: Ms. Brennan?

4 MS. BRENNAN: No questions, Your Honor.

5 MR. BEHRENBRINKER: Your Honor, the only other  
6 thing I would say on behalf of Mr. Hanes is that Ashley,  
7 according to the Pretrial Services Report, Ashley Hanes, who  
8 resides in St. Paul, did say that her brother Mr. Hanes  
9 could stay with her, and she would get him to and from his  
10 physical therapy, doctor appointments, and so on and so  
11 forth.

12 Now, I understand there's a presumption that he  
13 remain in custody. I think it's very apparent that  
14 Sherburne County Jail or really any jail facility isn't  
15 equipped to meet the very significant needs of Mr. Hanes at  
16 this time. He has sustained very, very serious injuries  
17 relatively recently toward the middle part of April. He has  
18 gone through very significant orthopedic surgery. He's  
19 really being held together by orthopedic rods and plates and  
20 screws, several, all of his limbs.

21 On one hand, he's very fortunate that the drive-by  
22 shooters didn't kill him or didn't shoot -- it could have  
23 been worse, I guess. He could be dead. However, he is in a  
24 wheelchair. He has very significant medical needs. The  
25 Sherburne County Jail is not equipped.

1           Now, I spoke to Commander Carr late yesterday  
2           afternoon. And, of course, you know, basically he confirmed  
3           to me that he told a family member of Mr. Hanes that given  
4           all of his needs, he would probably be better off somewhere  
5           else, obviously. Commander Carr told me that if the  
6           Marshals order it, you know, they'll do what they can do,  
7           but, you know, I went through great detail with Commander  
8           Carr yesterday afternoon, what happened to him, what his  
9           injuries are, what he needs.

10           And the response was that, you know, obviously,  
11           he's going to do what he can do, but he's limited. He's  
12           got, I don't know, a thousand guys locked up out there in  
13           terms of state, federal and immigration cases. I don't  
14           know.

15           One individual in a wheelchair with one good arm  
16           with a lot of medical, a lot of special needs, individual  
17           needs, you know, they're just not -- a jail just isn't set  
18           up to provide these kind of needs. I would urge the Court  
19           to seriously consider allowing Mr. Hanes to reside with his  
20           sister with an electronic bracelet.

21           He can't run. He could roll himself down the  
22           street I suppose theoretically in a wheelchair, but if he  
23           has, you know, what he needs is he needs to have his  
24           medication. He needs to have his physical therapy. He  
25           needs to be followed by his orthopedic surgeon, and he needs

1 to get well and then he can come into court and face the  
2 very serious charges that he has pending, but we would urge  
3 the Court to, in this particular case, to allow him to, you  
4 know, under daily, intent supervision from a pretrial  
5 services officer, reporting, calling in, having home visits  
6 from the PO, electronic monitoring, only going out when his  
7 sister can take him to physical therapy, hospital or doctor  
8 office visits, something like that, but he needs to have his  
9 diet. He needs to have his physical therapy. He needs to  
10 have his meds. He needs to have his medical care and  
11 treatment.

12 Thank you, Your Honor.

13 THE COURT: Ms. Brennan, anything further?

14 MS. BRENNAN: Yes, Your Honor. Yes, the  
15 government is aware of Mr. Hanes medical condition, his  
16 injuries, and the fact that he was shot. And I have no  
17 doubt that it might be better for Mr. Hanes if he was in a  
18 different location, but it would not be better for the  
19 community and that's what we're focused on, Your Honor.

20 Mr. Hanes is a very dangerous man. A dangerous  
21 man who has been escalating over the last six months.  
22 Again, you know, five open felony cases in the state just  
23 since November of 2020. Very, very serious cases. Four  
24 firearms are involved in those cases. In one case, it's him  
25 alleged to have assaulted a woman and tried to run her off

1 the road ramming police cars. He's a dangerous person, and  
2 I think our first responsibility is to protect the community  
3 from Mr. Hanes.

4 I would also say, Your Honor, that when we brought  
5 Mr. Hanes over from Ramsey County, we did speak with the  
6 marshals, and we're assured by the marshals that his medical  
7 needs could be met at Sherburne. The bond report indicates  
8 that he has had help from nurses while in Sherburne.

9 Mr. Hanes himself said that the first time he met  
10 with a physical therapist in Ramsey County was Thursday,  
11 which is the day before he came over to federal custody, so  
12 he was in Ramsey for at least a week before he was able to  
13 meet with a physical therapist over there.

14 It's going to take a little bit of time to get him  
15 what he needs at Sherburne, but he's only been in Sherburne  
16 since Friday, and I've had defendants in Sherburne who have  
17 been shot, who have been recently discharged from the  
18 hospital with multiple injuries. I mean they are able to  
19 deal with it. And what I would say to the extent that the  
20 Court is concerned about this, that we schedule a status  
21 conference in a week where we can actually dig down into  
22 this and figure out, okay, what do his doctors actually say  
23 and what can Sherburne do and what can Sherburne not do?  
24 And the government can certainly do some investigating on  
25 that and try to figure that out.

1            Obviously, if there's something that he absolutely  
2            has to have that Sherburne absolutely can't do, that's a  
3            problem. We would concede that. I don't think that that's  
4            the case, Your Honor. I think he's basically only been in  
5            there over the weekend.

6            He did see a nurse today. I don't know the exact  
7            status of his medications and what he absolutely has to have  
8            right now or the status of whether they can get physical  
9            therapy into Sherburne, but certainly I would investigate  
10           that for the Court and be able to provide the Court with a  
11           summary of what they can do and what he needs.

12           And, hopefully, Mr. Hanes would cooperate and help  
13           give us access to his medical records so that we can look  
14           into that and make sure that everyone is on the same page  
15           about what this is. But I don't think it's safe for  
16           Mr. Hanes to be in the community.

17           And I think, unfortunately, statistically  
18           speaking, if you look at Mr. Hanes, just his history of  
19           arrests and offense conduct, he is exactly the kind of  
20           person who is at risk of being a victim of a shooting or  
21           being a shooter, statistically speaking. And another real  
22           risk to Mr. Hanes and to the community is that Mr. Hanes  
23           would be somebody who might get out of jail and go and try  
24           to retaliate against the people who shot him.

25           So I think it's a risk to the community. I think



1 it's a risk to Mr. Hanes, and I think it's a risk to  
2 Mr. Hanes's sister and anybody that he's around if he's  
3 released.

4 THE COURT: Mr. Behrenbrinker or Mr. Hanes, do you  
5 want to have a -- I'm going to turn it over to your  
6 attorney.

7 THE DEFENDANT: Yes, yes, yes. Mr. James, and  
8 Your Honor, I just want to say a couple of things real  
9 quick. My sister don't stay in St. Paul at all.  
10 Ms. Maribel will tell you where my sister stays at because  
11 I'm pretty sure she talks with her. I think she stays in  
12 St. Louis Park or Brooklyn Center, one of them two, and she  
13 stays way out of St. Paul. I'm not even from, you know, I  
14 think that's a good place for me to be is to be out of St.  
15 Paul, period, you know.

16 MR. BEHRENBRINKER: Okay.

17 THE DEFENDANT: And, Your Honor, I'm in so much  
18 pain, you know, it's kind of, I'm not trying to be too much  
19 TMI, but, Your Honor, I can't even, when I was in the  
20 hospital even when I was in Regions, Regions and the  
21 Workhouse, Your Honor, I couldn't even wipe my own ass, you  
22 know. Literally, here, here, I don't have my moving board  
23 or nothing. I don't have my moving board to go to the  
24 toilet or nothing, so I got to hop over this wheel on my  
25 wheelchair, which I could slip, and using my elbow, using my

1 elbow to balance me, you know, because I only have one hand,  
2 Your Honor, to balance me, you know, to move forward to the  
3 toilet back to my chair, to my Walker to wipe my own ass.  
4 You know, I've got to stand up on my walker to wipe my own  
5 ass, Your Honor.

6 When I came here, I told the deputies and the  
7 nurses, so the question is whose going to wipe my ass,  
8 because I can't do it? Using my left hand, because I've got  
9 to lean. I've got to lean on a toilet, Your Honor. I can't  
10 lean on my right side because I've got rods over here and  
11 it's very tender. I'm talking about very tender.

12 So right now, you know, the whole time I've been  
13 in Sherburne County, Your Honor, I have not even moved out  
14 of my bed, and I've got bed sores on my ass right now. They  
15 told me to shit. How do you expect me to shit without a  
16 nurse, you know?

17 THE COURT: Mr. Behrenbrinker, do you have  
18 anything?

19 MR. BEHRENBINKER: I would just -- thank you,  
20 Your Honor. I appreciate what my client is telling the  
21 Court. I've been doing this work for a while, and I've been  
22 dealing with or working out with clients who have been in  
23 Sherburne County for a while, and I don't know where the  
24 government's lawyer is coming from when Sherburne County  
25 just isn't equipped to deal with this kind of a situation.

1 They're just not. No jail is. It's unreasonable. That's  
2 why Ramsey County sent him to their workhouse because they  
3 are set up.

4 Alternatively, if the Court is not inclined to  
5 consider having him under a multitude of conditions reside  
6 with his sister Amber.

7 THE DEFENDANT: Ashley.

8 MR. BEHRENBRIKNER: Or Ashley, I'm sorry, in Saint  
9 Louis Park or Brooklyn Center or whatever suburb she lives  
10 in. Perhaps, the Court would consider as an alternative  
11 order that he go back to the Ramsey County Workhouse. My  
12 client has testified that when he was at the workhouse, he  
13 was getting his diet. He was getting his medication. He  
14 was getting access to his physical therapy and so on.

15 I've had a multitude of clients at Sherburne and  
16 every time they send a note to get a nurse, a doctor is, I  
17 don't know what clients the government is working with out  
18 there but the medical, they don't have medical staff, the  
19 doctors that there are on a daily basis. They don't have  
20 any physical therapists on staff. They don't have -- they  
21 have nurses, part-time LPNs or what have you that come in,  
22 but they just, they're not equipped. They're not set up.  
23 That's not their job, where the Ramsey County Workhouse is  
24 more set up to deal with the community because they got  
25 people coming and going.

1 But, in any event, I just -- he's got an extremely  
2 serious prior criminal history. He's facing extremely  
3 significant charges here. But for his physical condition  
4 and his medical needs, I wouldn't be making these arguments  
5 because I know that he would be detained at Sherburne County  
6 Jail for the duration. My client is waving at me again.

7 THE DEFENDANT: I just have one thing to say, this  
8 is to Your Honor. Your Honor, I understand I made my  
9 mistakes, man, and I made my mistakes before I got shot,  
10 but, you know with me getting shot, man, it's the second  
11 chance at life. I'm not going to die. I got three babies.  
12 I got three babies, man, and I got a second chance at life.  
13 These shots are killing, they could have hit my main  
14 arteries or anything. I had an angel with me that day to  
15 have a second chance at life.

16 I just want to let you know, Your Honor, man, I'm  
17 not going to fuck up or nothing man. I'm sorry for my  
18 language.

19 THE COURT: We're going to have to keep control of  
20 this language here.

21 THE DEFENDANT: I'm sorry, Your Honor. I'm sorry,  
22 it's just -- but I just want to let you know I got a second  
23 chance at life, man.

24 THE COURT: Okay.

25 THE DEFENDANT: I'm more valuable and more

1 appreciative at the time that I do have here. I just want  
2 to let it go back to my attorney. I'm sorry, I'm sorry.

3 MR. BEHRENBRIKNER: I appreciate Your Honor's  
4 patience allowing my client to express himself in court.

5 We have nothing further, Your Honor.

6 THE COURT: Ms. Brennan, anything further from the  
7 government?

8 MS. BRENNAN: No, Your Honor.

9 THE COURT: Okay. With regard to probable cause  
10 and Count I of the Complaint, the Court finds that there is  
11 probable cause and the matter will be bound over to the  
12 District of Minnesota.

13 With regards to detention, I have considered all  
14 the evidence, and I've given consideration and  
15 recommendation to Pretrial Services, which recommends  
16 detention, based on the evidence I find that the government  
17 has met its burden of showing that there's no conditions or  
18 combination of conditions which will reasonably assure the  
19 safety of the community and the likelihood that the  
20 defendant would appear in court.

21 As such, I will order the defendant remain  
22 detained until the completion of the case, and he will be  
23 remanded to the custody of the United States Marshal.

24 Ms. Brennan, I will ask that you prepare a  
25 Proposed Order in this matter.

1 MS. BRENNAN: Yes, Your Honor.

2 THE COURT: Okay. Anything further from the  
3 government?

4 MS. BRENNAN: No, Your Honor, thank you.

5 THE COURT: Mr. Behrenbrinker?

6 MR. BEHRENBRINKER: No, Your Honor.

7 THE COURT: Thank you.

8 (Court adjourned at 4:15 p.m.)

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12 **REPORTER'S CERTIFICATE**

13

14 I, Maria V. Weinbeck, certify that the foregoing is  
15 a correct transcript from the record of proceedings in the  
16 above-entitled matter.

17

18 Certified by: s/ Maria V. Weinbeck

19 Maria V. Weinbeck, RMR-FCRR

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